

1 Karma M. Julianelli (SBN 184175)  
karma.giulianelli@bartlitbeck.com  
**BARTLIT BECK LLP**  
2 1801 Wewetta St., Suite 1200  
Denver, Colorado 80202  
3 Telephone: (303) 592-3100  
4

Hae Sung Nam (*pro hac vice*)  
5 hnam@kaplanfox.com  
**KAPLAN FOX & KILSHEIMER LLP**  
6 850 Third Avenue  
New York, NY 10022  
7 Tel.: (212) 687-1980  
8

*Co-Lead Counsel for the Proposed Class in In re Google Play Consumer Antitrust Litigation*

10 Steve W. Berman (*pro hac vice*)  
steve@hbsslaw.com  
**HAGENS BERMAN SOBOL SHAPIRO LLP**  
11 1301 Second Ave., Suite 2000  
Seattle, WA 98101  
12 Telephone: (206) 623-7292  
13

*Co-Lead Counsel for the Proposed Class in In re Google Play Developer Antitrust Litigation and Attorneys for Pure Sweat Basketball, Inc.*

14 Bonny E. Sweeney (SBN 176174)  
bsweeney@hausfeld.com  
**HAUSFELD LLP**  
15 600 Montgomery Street, Suite 3200  
San Francisco, CA 94104  
16 Telephone: (415) 633-1908  
17

*Co-Lead Counsel for the Proposed Class in In re Google Play Developer Antitrust Litigation and Attorneys for Peekya App Services, Inc.*

20 [Additional counsel appear on signature page]

21 Paul J. Riehle (SBN 115199)  
paul.riehle@faegredrinker.com  
**FAEGRE DRINKER BIDDLE & REATH LLP**  
22 Four Embarcadero Center, 27th Floor  
San Francisco, CA 94111  
Telephone: (415) 591-7500  
23

Christine A. Varney (*pro hac vice*)  
cvarney@cravath.com  
**CRAVATH, SWAINE & MOORE LLP**  
825 Eighth Avenue  
New York, New York 10019  
Telephone: (212) 474-1000  
24

*Counsel for Plaintiff Epic Games, Inc. in Epic Games, Inc. v. Google LLC et al.*

25 Brian C. Rocca (SBN 221576)  
brian.rocca@morganlewis.com  
**MORGAN, LEWIS & BOCKIUS LLP**  
One Market, Spear Street Tower  
26 San Francisco, CA 94105-1596  
Telephone: (415) 442-1000  
27

Daniel M. Petrocelli (SBN 97802)  
dpetrocelli@omm.com  
**O'MELVENY & MYERS LLP**  
1999 Avenue of the Stars  
Los Angeles, CA 90067-6035  
Telephone: (310) 553-6700  
28

Ian Simmons (*pro hac vice*)  
isimmons@omm.com  
**O'MELVENY & MYERS LLP**  
1625 Eye Street, NW  
Washington, DC 20006  
Telephone: (202) 383-5300  
29

*Counsel for Defendants Google LLC et al.*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

# **IN RE GOOGLE PLAY STORE ANTITRUST LITIGATION**

Case No. 3:21-md-02981-JD

**THIS DOCUMENT RELATES TO:**

**STIPULATION AND [PROPOSED]  
ORDER REGARDING EXPERT  
STIPULATION**

*Epic Games Inc. v. Google LLC et al.*, Case No. 3:20-cv-05671-JD

Judge: Hon. James Donato

*In re Google Play Consumer Antitrust Litigation*, Case No. 3:20-cv-05761-JD

*In re Google Play Developer Antitrust Litigation, Case No. 3:20-cv-05702-JD*

*In re Google Play Developer Antitrust Litigation*, Case No. 3:20-cv-05792-JD

Upon the agreement of the parties in the above-captioned actions (the “Parties”, and each individually, a “Party”) regarding the scope of disclosures and discovery relating to all experts (testifying and non-testifying), the Court enters this Order:

1. Except as specifically set forth and/or modified herein, the Parties shall comply with all of the requirements of Federal Rule of Civil Procedure 26 with regard to the scope of disclosures and discovery relating to all experts.

2. Any expert retained in connection with the above-captioned actions shall be provided with a copy of this Order.

3. The Parties agree that the only disclosures relating to retained experts (testifying and non-testifying) and consultants in the above-captioned actions shall be those pertaining only to testifying experts, resulting from and as required by Federal Rule of Civil Procedure 26(a)(2) as modified or limited by this Order.

4. For purposes both of the disclosure requirement agreed at Paragraph 3 above and also for purposes of discovery relating to experts, the term "considered" as used in Federal Rule of Civil Procedure 26(a)(2)(B)(ii) and 26(b)(4)(C)(ii) shall be interpreted as "relied upon."

5. Unless relied upon by a testifying expert as a basis for his or her opinion(s) expressed in final expert reports, declarations or other testimony in this litigation, the following categories of information, whether in documents, communications, or other forms, shall not be discoverable:

- a. The content of communications between a testifying expert and his or her staff;
  - b. The content of communications between, on the one hand, a testifying expert and his or her staff and, on the other hand, any other non-testifying experts or consultants and their staff;
  - c. The content of communications between, on the one hand, a testifying expert and his or her staff, and, on the other hand, the Party or Parties who retained that expert;

- 1                   d. The content of communications between, on the one hand, a testifying
- 2                   expert and his or her staff, and, on the other hand, any other testifying
- 3                   experts and their staff retained by the same Party or Parties; and
- 4                   e. Work product prepared by or at the direction of a testifying expert, other
- 5                   than a testifying expert's final report or declaration submitted in this
- 6                   litigation (including, but not limited to, notes, outlines, memoranda,
- 7                   research and analyses), as well as communications regarding that work
- 8                   product with that testifying expert's staff or any other non-testifying
- 9                   experts or consultants.

10                 6. The Parties shall not be obliged to include documents encompassed within the  
11 scope of Paragraph 5 above on any privilege log.

12                 7. Within three calendar days of service of an expert report, declaration, or affidavit,  
13 the Party or Parties submitting such report, declaration, or affidavit shall produce all the data,  
14 documents, and other information relied upon by the expert witness as a basis for the expert  
15 witness's opinion(s). Data, documents, and other information relied upon by an expert witness  
16 shall include, but are not limited to, all data, spreadsheets (including formulas embedded in  
17 spreadsheet cells, if applicable), statistical analyses, regression analyses, input and output files  
18 for each program or computer code, programs, computer code, and other sources, reports,  
19 schedules, literature, or websites. A detailed readme file that explains (1) each of the source  
20 input files and Bates-numbered data files to be included in each specific folder of the backup  
21 production and (2) the specific order to run each program or computer code shall also be  
22 produced. Bates numbered documents previously produced by any Party and documents that are  
23 publicly available need not be produced, but a list of any such documents identified by Bates  
24 number (and, for publicly available documents, the location where such materials can be located)  
25 shall be included with the information relied upon by the expert. Neither Party needs to produce  
26 programs or software that (i) are publicly available at reasonable cost and within a reasonable  
27 time and (ii) are not practicable to copy, as long as the Party or Parties offering the expert's

1 opinion provide timely and reasonable access and instructions for purposes of replication or  
2 analysis of disclosed results. Documents that are publicly available must be identified but need  
3 not be produced absent specific request. Documents and data should be produced electronically  
4 (via email or storage device such as hard drive or thumb drive) where appropriate.

5       8. The production of information relied upon shall be sufficient for the opposing  
6 Parties and experts to reconstruct and verify the expert's work, calculations, and analyses, and  
7 shall include any instructions and guides necessary to assist in that effort. The producing Party  
8 also shall promptly answer reasonable technical inquiries about data, programs, or code prior to  
9 the expert's deposition.

10       9. Without prejudice to a party's rights under Federal Rule of Civil Procedure  
11 26(b)(4)(D)(i) and (ii), all work product prepared by or at the direction of an expert or consultant  
12 who is not expected to be called as a witness at trial (including, but not limited to, notes, outlines,  
13 memoranda, reports, drafts, research and analyses), as well as communications by or among such  
14 non-testifying experts or consultants or their staffs, shall not be discoverable through any means.

15       10. Nothing in this Order shall limit or waive any Party's rights to object for any  
16 reason to the admission of any opposing Party's expert testimony into evidence or to the  
17 qualification of any person to serve as an expert witness.

18       11. The requirements of Federal Rule of Civil Procedure 26(b)(4)(E) shall not apply in  
19 this litigation.

20       12. This Order may be amended only by a subsequent written stipulation among the  
21 Parties or upon order of the Court.

1 IT IS SO STIPULATED.

2 Dated: July 9, 2021

3 CRAVATH, SWAINE & MOORE LLP

4 Christine Varney (*pro hac vice*)  
5 Katherine B. Forrest (*pro hac vice*)  
6 Darin P. McAtee (*pro hac vice*)  
7 Gary A. Bornstein (*pro hac vice*)  
8 Timothy G. Cameron (*pro hac vice*)  
Yonatan Even (*pro hac vice*)  
Lauren A. Moskowitz (*pro hac vice*)  
Omid H. Nasab (*pro hac vice*)  
Justin C. Clarke (*pro hac vice*)  
M. Brent Byars (*pro hac vice*)

9 FAEGRE DRINKER BIDDLE & REATH LLP

10 Paul J. Riehle (SBN 115199)

11 Respectfully submitted,

12 By: /s/ Yonatan Even  
13 Yonatan Even

14 *Counsel for Plaintiff Epic Games, Inc.*

15 Dated: July 9, 2021

16 BARTLIT BECK LLP

17 Karma M. Giulianelli

18 KAPLAN FOX & KILSHEIMER LLP

19 Hae Sung Nam

20 Respectfully submitted,

21 By: /s/ Karma M. Giulianelli  
22 Karma M. Giulianelli

23 *Co-Lead Counsel for the Proposed Class in  
In re Google Play Consumer Antitrust  
Litigation*

1 Dated: July 9, 2021

PRITZKER LEVINE LLP  
Elizabeth C. Pritzker

2 Respectfully submitted,

3 By: /s/ Elizabeth C. Pritzker  
4 Elizabeth C. Pritzker

5 *Liaison Counsel for the Proposed Class in*  
6 *In re Google Play Consumer Antitrust*  
7 *Litigation*

8 Dated: July 9, 2021

9 HAGENS BERMAN SOBOL SHAPIRO LLP  
10 Steve W. Berman  
Robert F. Lopez  
Benjamin J. Siegel

11 SPERLING & SLATER PC  
12 Joseph M. Vanek  
13 Eamon P. Kelly  
Alberto Rodriguez

14 Respectfully submitted,

15 By: /s/ Steve W. Berman  
16 Steve W. Berman

17 *Co-Lead Interim Class Counsel for the*  
18 *Developer Class and Attorneys for Plaintiff*  
19 *Pure Sweat Basketball*

1 Dated: July 9, 2021

HAUSFELD LLP  
2 Bonny E. Sweeney  
3 Melinda R. Coolidge  
4 Katie R. Beran  
5 Scott A. Martin  
6 Irving Scher

7 Respectfully submitted,

8 By: /s/ Bonny E. Sweeney  
9 Bonny E. Sweeney

10 *Co-Lead Interim Class Counsel for the  
11 Developer Class and Attorneys for Plaintiff  
12 Peekya App Services, Inc.*

13 Dated: July 9, 2021

14 MORGAN, LEWIS & BOCKIUS LLP  
15 Brian C. Rocca  
16 Sujal J. Shah  
17 Minna L. Naranjo  
18 Rishi P. Satia  
19 Michelle Park Chiu

20 O'MELVENY & MYERS LLP  
21 Daniel M. Petrocelli  
22 Ian Simmons  
23 Benjamin G. Bradshaw  
24 Stephen J. McIntyre

25 Respectfully submitted,

26 By: /s/ Daniel M. Petrocelli  
27 Daniel M. Petrocelli

28 *Counsel for Defendants Google LLC et al.*

## **E-FILING ATTESTATION**

I, Daniel M. Petrocelli, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

/s/ Daniel M. Petrocelli

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Daniel M. Petrocelli

\* \* \*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED  
2  
3 DATED: July 15, 2021

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5 HON. JAMES DONATO  
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United States District Court Judge